



Federal Communications Commission
Washington, D.C. 20554

DA 07-3533
Released: August 7, 2007

Andrew J. Schwartzman, Esq.
Media Access Project
Suite 1000
1625 K Street, N.W.
Washington, DC 20006

Margaret L. Tobey, Esq.
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006

Re: Application for Renewal of License
WTVJ(TV), Miami, Florida
File No. BRCT-20041001ABM
Facility ID No. 63154

Counsel:

On December 9, 2004, the United Church of Christ ("UCC") filed a Petition to Deny ("Petition") the above-referenced license renewal application of NBC Telemundo License Co. ("NBC Telemundo"), licensee of station WTVJ(TV), Miami, Florida.¹ NBC filed an Opposition to the Petition to Deny on January 10, 2005, to which UCC responded on February 7, 2005. For the reasons set forth below, we deny the Petition.

Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"), states that the Commission shall grant a license renewal application if it finds, "*with respect to that station,*" that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.² The Commission analyzes any public interest allegation according to a two-step process. The petition must first contain specific allegations of fact sufficient to show that such a grant would

¹ Members of UCC also submitted letters in support of the UCC Petition.

² 47 U.S.C. §309(k)(1) (emphasis added).

be *prima facie* inconsistent with the public interest.³ If so, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁴

UCC requests that the Commission deny the license renewal of station WTVJ(TV) based on the decision by the NBC Television Network not to air one of its advertisements.⁵ UCC argues that “under the facts here, WTVJ improperly failed to recognize that UCC had a limited right of access for the purchase of time.”⁶ According to NBC Telemundo, the spot “violated the [NBC Television] Network’s policy against addressing issues of public controversy through paid commercial advertisements.”⁷

We conclude that refusal of the editorial advertisement at issue is not *prima facie* inconsistent with the public interest. Under the plain terms of section 309(k), the Commission cannot deny a license renewal application based on violations that occurred at other stations licensed to the same licensee because the relevant findings must be made “with respect to that station.”⁸ Here, UCC does not allege that it ever offered the spot at issue to station WTVJ(TV). According to NBC Telemundo, while the NBC Network decides which ads to run as part of the network programming provided to owned-and-operated stations and other NBC affiliates, NBC stations also “sell advertising time locally and ultimately make their own judgments as to the acceptability of local spots.”⁹ Station WTVJ(TV) may have chosen to air the spot if it had the opportunity. In any event, “Congress...has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.”¹⁰ Because UCC’s allegations do not pertain to station WTVJ(TV), we conclude that UCC’s petition is insufficient to make out a *prima facie* case.

³ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (“Astroline”).

⁴ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

⁵ The advertisement at issue is entitled “Night Club,” and is intended, according to UCC, to help “equip local church leaders to welcome newcomers to worship,” and to “move the national culture from one of division to one of inclusion.” Petition to Deny, at 2-3. The spot depicts would-be worshippers approaching a church guarded by bouncers who refuse entrance to what appears to be a gay couple, a Hispanic young man, a man in a wheelchair, and an African-American woman, followed by the tag “Jesus didn’t turn people away...Neither do we.” The spot then concludes with the statement: “No matter who you are or where you are on life’s journey, you’re welcome here.”

⁶ *Id.* at 4.

⁷ Opposition to Petition to Deny, at 2-3.

⁸ 47 U.S.C. §309(k)(1).

⁹ Opposition to Petition to Deny, at 3, note 9.

¹⁰ *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 (2003), citing 47 U.S.C. § 309(k)(1).

Accordingly, the Petition to Deny filed by United Church of Christ **IS DENIED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Angela J. Campbell, Esq.
Institute for Public Representation
Georgetown University Law Center
Suite 312
600 New Jersey Avenue, N.W.
Washington, DC 20001

F. William LeBeau, Esq.
Assistant Secretary and Senior Regulatory Counsel
NBC Telemundo License Co.
1299 Pennsylvania Avenue, N.W.
11th Floor West
Washington, DC 20004